IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.11166 to 11171 & 12321 to 12324 of 2017
and
W.M.P.Nos.12100 to 12105 & 13087 to 13090 of 2017

In W.P.No.11166 of 2017

M/s.Cheran Spinner Private Limited,
Rep. by its Director-A.S.Planisamy,
S.F.No.4771/1, Patharai,
Sowthapuram PO,
Erode-638 006,
Namakkal District. ..Petitioner in WP No's 11166 to 11171/17

1.Tvl Sri Vinayaga Spinning Mills(P) Ltd,
representation by its Director, Sri K.Madeswaran,
S.F.No.144/2, Kumarapalayam Main Road,
Veppadai, Elanthakuttai(P.O)
Erode-638008 ..Petitioner in WP's No.12321 to 12324/17

Vs.

1.The Authority for Clarification and Advance Ruling,
Rep.by its
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai- 600 005.

2.The Assistant Commissioner (CT)(FAC),
Tiruchegode Rural Circle,
Tiruchengode, Namakkal District. ..Respondents in all WP's

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, forbearing the second respondent from in any way proceeding further in pursuance of the Notice issued in TIN:333873200904/2010-11, 2011-12,2012-13,2013-14,2014-15,2015-16 dated 10.06.2016 pending disposal of the Review Petition filed by similarly placed petitioners/dealers under Section 48-A(4) of TNVAT Act, 2006 before the first respondent.

Prayer in WP 12321 to 12324 of 2017

Writ Petition filed under Article 226 of Constitution of India, Praying to issue a Writ of Certiorari call for records on the file of 2nd respondent in TIN. No. 33093203370/ 2012-13, 2014-2015, 2013-2014, 2015-2016 dated 27.03.2017 and quash the same as being without jurisdiction an authority of law and contrary to the principles of natural justice

For Petitioner : Mr.S.Rajasekar in WP 11166 to 11171/17
For Respondent : Mr.ANR.Jaya Prathap, SGP (T) All WP's
For Petitioner : M/s.R.Senniappan in WP No's 12321 to 12324/17

O R D E R

Today, the matter is listed through Video Conference. By consent of both the parties, the Writ Petition is taken up for final disposal.

2. In the impugned notices in all these Writ Petitions, the department has proposed to assess sale of Viscose Staple Fibre (VSF) and Poly Fibre (PFA) Hank Yarn stating that the assessee have wrongly claimed exemption under Entry 44 of the Fourth Schedule to the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'TNVAT Act'). The aforesaid issue of exemption of VSF and PFA Hank yarn has now been settled by a Hon'ble Division Bench of this Court in the case of M/s.Aakavi Spinning Milss (P) Ltd., 2A, Pichankadu, B.P. Agraharam (PO), Erode rep. by its Director R.Selvaraj Vs. The Authority for Clarification and Advance Ruling rep. by the Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another, in W.A.No.947 of 2018, whereby, the Hon'ble Division Bench had held that Cotton Hank yarn continuous to be exempted in Entry 44 and so also, VSF and PFA. The relevant portion of the order reads as follows:

> "33. Thus, in the light of the said Budget Speech also, there is nothing specifically mentioned to state that there was any intention to restrict the exemption of Hank yarn only to the cotton hank yarn and not others. Cotton hank yarn as well as other types of yarn in hank form are equally entitled to exemption under Entry 44 and therefore, Handloom Industry stood encouraged by said exemption. Was there any intention of State to harm Powerloom Industry by denying exemption to other types of Yarn sold in Hank form. The answer is an emphatic 'No'. Therefore, we re-iterate that firstly, there is no occasion to refer to the external aids like Finance Minister Speech in the present case, in view of the plain language in Entry

44 and even if one were to do so, there is no occasion to make an inference from the said Budget Speech that only cotton Hank yarn was entitled to be exempted. Cotton Hank yarn continues to be exempt in Entry 44 and so also VSF and PFA Hank yarn will be entitled to such exemption. The Court cannot supply or insert the words in the Entries in the statute, as is sought to be canvassed by the Revenue before us."

In view of the aforesaid decision, the proposal in the impugned notices for levy of taxes on sale of BSF and PFA Hank yarn cannot be sustained.

3. However, if there are any other issues with regard to proposal of levy tax, it would be appropriate to grant liberty to the assessee to give their reply to the same.

4. In the light of the above observations, the impugned notices, insofar as it relates to proposal of levy of sales tax on Cotton Hank yarn or VSF or PFA, are hereby set aside. The Assessee is at liberty to give their reply to any other issue proposed in the impugned show cause notices except the issue relating to Cotton Hank yarn, within 30 days from the date of receipt of a copy of this order.

5. The Writ Petitions stand disposed of accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Authority for Clarification and Advance Ruling,
Rep.by itsm
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai- 600 005.

2.The Assistant Commissioner (CT)(FAC),
Tiruchegode Rural Circle,
Tiruchengode, Namakkal District.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.25798
+1cc to Special Government Pleader, S.R.No.25987

W.P.Nos.11166 to 11171 & 12321 to 12324 of 2017
and
W.M.P.Nos.12100 to 12105 & 13087 to 13090 of 2017

RLD(CO)
KKV/27/08/2020